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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYANT K. VALENTINE,

Defendant and Appellant.

B207617

(Los Angeles County
Super. Ct. No. LA056950)

THE COURT:*

Bryant K. Valentine (appellant) appeals from the judgment following his plea of no contest to offering to sell narcotics (cocaine base), a violation of Health and Safety Code section 11352, subdivision (a). The trial court sentenced appellant to the high term of five years. The trial court struck the allegations that appellant had suffered a prior conviction of a serious felony and a prior prison term. (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i), 667.5, subd. (b).)

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. The brief acknowledged that counsel had been unable to find any arguable issues.

* BOREN, P. J., DOI TODD, J., ASHMANN-GERST, J.

On August 15, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

The record shows that appellant was arrested after he sold .31 net grams of a substance containing cocaine to an undercover officer.¹ After the undercover officer signaled that a buy had been made, appellant was detained by other officers. The undercover officer paid for the cocaine with marked bills, which were found in appellant's pocket.

Prior to trial, and after a discussion among the trial court, the prosecutor, and appellant's attorney, the trial court informed appellant that it had indicated to counsel it would strike appellant's strike conviction for purposes of punishment in his case. Also, if appellant pleaded guilty, the trial court would impose the high term of five years. Appellant and both parties indicated that that was their understanding of the trial court's intentions. The trial court confirmed that the prosecutor had been seeking the low term of three years, doubled to six years under the "Three Strikes" law. The trial court then granted appellant's *Romero* motion.² The trial court accepted appellant's signed plea form and informed appellant of the consequences of his plea. The prosecutor took appellant's plea and his admission of a prison prior. The trial court struck the prison prior and sentenced appellant to the agreed-upon term of five years.

Appellant subsequently filed a notice of appeal and a request for a certificate of probable cause, which stated that the appeal was based on the sentence or other matters occurring after the plea and that it also challenged the validity of the plea or admission. The trial court denied appellant's request.

In his request for a certificate of probable cause, appellant alleged that the trial court used materially false information to coerce him into taking the plea bargain. He

¹ The facts are taken from the clerk's transcript of the preliminary hearing, since appellant entered his plea before trial.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

said the claims of his having a 1985 strike were false. Appellant’s allegation clearly attacks the validity of his plea, and the appeal is therefore inoperative, since appellant did not obtain a certificate of probable cause. Under Penal Code section 1237.5, a defendant may not appeal from a judgment of conviction following a guilty or no contest plea, unless he files with the trial court a written, sworn statement “showing reasonable, constitutional, jurisdictional, or other grounds going to the legality of the proceedings,” (Pen. Code, § 1237.5, subd. (a)), and the trial court executes and files “a certificate of probable cause for such appeal with the clerk of the court” (Pen. Code, § 1237.5, subd. (b)); see *People v. Mendez* (1999) 19 Cal.4th 1084, 1094-1095.) In compliance with Penal Code section 1237.5, the first paragraph of California Rules of Court, rule 8.304(b)³ requires that for the appeal to be perfected, the defendant must file “the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.” Rule 8.304 further provides that the notice of appeal must be marked “Inoperative” if the superior court denies a certificate of probable cause. The requirements of Penal Code section 1237.5 and the first paragraph of rule 8.304 (former rule 31(b)) must be strictly applied. (*People v. Mendez, supra*, at pp. 1098-1099.)

Although appellant stated on his appeal form that the appeal was also based on his sentence or other matters occurring after the plea, the form discusses the sentence only in the context of the alleged false information regarding his 1985 strike conviction being used to coerce his plea. Appellant received the exact sentence for which he had bargained. “In determining whether section 1237.5 applies to a challenge of a sentence imposed after a plea of guilty or no contest, courts must look to the substance of the appeal: ‘the critical issue is what the defendant is challenging, not the time or manner in which the challenge is made.’ [Citation.] Hence, the critical inquiry is whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 76 (*Panizzon*)). *Panizzon* reasoned that “by contesting the

³ All further references to rules are to the California Rules of Court.

constitutionality of the very sentence he negotiated as part of the plea bargain, defendant is, in substance, attacking the validity of the plea. For that reason . . . we hold that the certificate requirement of section 1237.5 applies.” (*Id.* at p. 78.)

We perceive no claim on appeal that is separate from appellant’s attack on the validity of his plea, which he entered in exchange for the agreed-upon sentence that was ultimately imposed. Because there is no cognizable claim on appeal, appellant’s appeal must be dismissed.

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

The appeal is dismissed.

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